

BEFORE THE STATE BOARD OF PHARMACY

STATE OF COLORADO

Case No. 2017-12

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF DISCIPLINARY PROCEEDINGS REGARDING THE IN-STATE PRESCRIPTION DRUG PHARMACY REGISTRATION IN THE STATE OF COLORADO OF CVS PHARMACY, INC., DBA CVS/PHARMACY #16751, REGISTRATION NO. PDO 7-69,

Respondent Pharmacy.

IT IS HEREBY STIPULATED AND AGREED by and between the Colorado State Board of Pharmacy ("Board") and CVS Pharmacy, Inc., dba CVS/Pharmacy #16751 ("Respondent Pharmacy") to resolve all matters pertaining to Board Case Number 2017-12, as follows:

FINDINGS AND CONCLUSIONS

1. The Board has jurisdiction over Respondent Pharmacy, its registration as an in-state prescription drug outlet, and the subject matter of this Stipulation and Final Agency Order ("Final Agency Order") pursuant to provisions of the Pharmacists, Pharmacy Businesses, and Pharmaceuticals Act at Title 12, Article 42.5, C.R.S. (2016).
2. Respondent Pharmacy was originally registered in the State of Colorado on or about September 18, 2002, being issued registration number PDO 7-69, and has been so registered at all times relevant to this disciplinary action.
3. Respondent Pharmacy's address of record with the Board and current location is 1400 S. Havana St., Aurora, CO 80012.
4. Respondent Pharmacy admits these findings and hereby waives any further proof in this or any other proceeding before the Board regarding the following facts.
5. Respondent Pharmacy failed to timely submit to the Board an application detailing a change in pharmacist manager and fee. In this case, 63 days transpired between October 14, 2016, the date the previous pharmacist manager ceased the position, and December 7, 2016, the date the application and fee were received.
6. On or about December 30, 2016, the Board initiated a complaint against Respondent Pharmacy because of the delay of 63 days in submitting an application detailing a change in pharmacist manager and fee.

7. Respondent Pharmacy's conduct, as set forth above, constitutes violations of the following sections of the Colorado Revised Statutes and Board Regulations:

Colorado Revised Statutes

12-42.5-116. Prescription drug outlet under charge of pharmacist.

(1)(a) A prescription drug outlet must be under the direct charge of a pharmacist manager. A proprietor who is not a pharmacist shall comply with this requirement and shall provide a manager who is a pharmacist;

(b) The registration of any prescription drug outlet becomes void if the pharmacist manager in whose name the prescription drug outlet registration was issued ceases to be engaged as the manager. The owner shall close the prescription drug outlet unless the owner: (I) Employs a new pharmacist manager; and (II) Within thirty days after termination of the former manager's employment: (A) Applies to transfer the registration to the new pharmacist manager; and (B) Pays the registration transfer fee.

12-42.5-123. Unprofessional conduct – grounds for discipline.

(1) The board may suspend, revoke, refuse to renew, or otherwise discipline any license or registration issued by it, after a hearing held in accordance with the provisions of this section, upon proof that the licensee or registrant:

(c) Has violated:

(I) Any of the provisions of this Article, including commission of an act declared unlawful in section 12-42.5-126;

(II) The lawful rules of the board;

(III) Any state or federal law pertaining to drugs;

(k) Has failed to meet generally accepted standards of pharmacy practice.

Pharmacy Board Rules and Regulations

5.00.70. Change in Pharmacist Manager.

a. An in-state and non-resident prescription drug outlet shall be under the direct charge of a pharmacist manager. A proprietor who is not a pharmacist shall comply with this requirement and shall provide a manager who is a pharmacist;

b. The registration of any in-state and non-resident prescription drug outlet shall become void if the pharmacist manager in whose name the registration was issued ceases to be engaged as the manager, and the owner shall close

the outlet unless such owner has employed a pharmacist manager and, within fourteen days after termination of the former manager's employment, has made application to transfer the registration to the new pharmacist manager and has paid the transfer fee therefor.

DISPOSITION

8. **Fine with Surcharge.** Pursuant to §12-42.5-124(5)(a)(I), C.R.S., Respondent Pharmacy shall pay a fine of One Thousand Dollars and No Cents (\$1,000.00) Respondent Pharmacy understands and acknowledges that, pursuant to §24-34-108, C.R.S., the Executive Director of the Department of Regulatory Agencies shall impose an additional surcharge of 15% of this fine. Respondent Pharmacy shall therefore pay a total amount of One Thousand One Hundred Fifty Dollars and No Cents (\$1,150.00). The total amount shall be payable to the State of Colorado and shall be remitted in one lump sum to be included when Respondent Pharmacy submits this signed Final Agency Order to the Board. Respondent Pharmacy shall write its registration number (PDO 7-69) and the case number (2017-12) on the check.
9. **Compliance.** Respondent Pharmacy shall submit all future applications and appropriate fees to the Board detailing changes in pharmacist manager within the required time frame specified by Board rule or statute in effect at the time of such pharmacist manager change.
10. **Other Requirements.** Through its undersigned Authorized Representative, Respondent Pharmacy acknowledges and agrees that, as a condition of this Final Agency Order, Respondent Pharmacy shall:
 - a. promptly pay all its own fees and costs associated with this Final Agency Order;
 - b. comply fully with this Final Agency Order; and
 - c. comply fully with the Pharmacists, Pharmacy Businesses, and Pharmaceuticals Act, all Board rules and regulations, and any other state and federal laws and regulations related to pharmaceuticals and pharmacists in the State of Colorado.
11. **Violations.** Time is of the essence in this Final Agency Order. It is the responsibility of Respondent Pharmacy to take all appropriate steps to comply fully with this Final Agency Order. Respondent Pharmacy acknowledges and agrees that any violation of this Final Agency Order shall constitute a willful violation of a lawful Board order, may be sanctioned as provided under §12-42.5-124(4), C.R.S., and may be sufficient grounds for additional discipline, including but not limited to revocation of its registration. The pendency of any suspension or disciplinary action arising out of an alleged violation of this Final Agency Order shall not affect the obligation of Respondent Pharmacy to comply with all terms and conditions of this Final Agency Order.

12. **Completion of Terms.** Respondent Pharmacy must make a written request to the Board to end the terms and conditions of this Final Agency Order. In any request, it shall be Respondent Pharmacy's sole responsibility to establish, through written and other documentation, that Respondent Pharmacy has met all terms of this Final Agency Order. The Board will consider Respondent Pharmacy's request during the ordinary course of business.
13. **Advisements and Waivers.** Through its undersigned Authorized Representative, Respondent Pharmacy enters into this Final Agency Order freely and voluntarily, after having the opportunity to consult with legal counsel and/or choosing not to do so. Respondent Pharmacy acknowledges its understanding that it has the following rights:
- a. To have a formal notice of hearing and charges served upon it;
 - b. To respond to said formal notice of charges;
 - c. To have a formal disciplinary hearing pursuant to §§12-42.5-123 and 12-42.5-124, C.R.S.; and
 - d. To appeal this Board order.

Respondent Pharmacy freely **waives** these rights, and acknowledges that such waiver is made voluntarily in consideration for the Board's limiting the action taken against it to the sanctions imposed herein.

14. **Acknowledgments.** The undersigned Authorized Representative of Respondent Pharmacy has read this Final Agency Order in its entirety and acknowledges, after having the opportunity to consult with legal counsel and/or choosing not to do so, that Respondent Pharmacy understands the legal consequences and agrees that none of the terms or conditions herein is unconscionable. Respondent Pharmacy is not relying on any statements, promises or representations from the Board other than as may be contained in this Final Agency Order. Respondent Pharmacy further acknowledges that it is not entering into this Final Agency Order under any duress.
15. **Integration and Severability.** Upon execution by all parties, this Final Agency Order shall represent the entire and final agreement of and between the parties in this case. In the event any provision of this Final Agency Order is deemed invalid or unenforceable by a court of law, it shall be severed and the remaining provisions of this Final Agency Order shall be given full force and effect.
16. **Public Record.** Upon execution by all parties, this Final Agency Order shall be a public record, maintained in the custody of the Board.
17. **Board Order.** This Final Agency Order shall become an order of the Board when it is accepted and signed by the Program Director or authorized Board representative.

18. **Effective Date.** This Final Agency Order shall become effective upon (a) mailing by first-class mail to Respondent Pharmacy at Respondent Pharmacy's address of record with the Board, or (b) service by electronic means on Respondent Pharmacy at Respondent Pharmacy's electronic address of record. Respondent Pharmacy hereby consents to service by electronic means if Respondent Pharmacy has an electronic address on file with the Board.

ACCEPTED AND AGREED BY

Respondent Pharmacy

Karen Distefano Director, Pharmacy Dated: 5/19/17
Authorized Representative / Title Regulatory Affairs

Subscribed and sworn to before me in the County of Providence,
State of Rhode Island, this 19th day of May, 2017, by
Karen Distefano, in his/her capacity as an authorized
agent of CVS Pharmacy, Inc., dba CVS/Pharmacy #16751.

Susan J. Hartley
Notary Public
State of Rhode Island

Susan J. Hartley
Notary Public

My commission expires: My Commission Expires 07/01/2018

FINAL AGENCY ORDER

WHEREFORE, the within Stipulation and Final Agency Order is approved, accepted, and hereby made an Order of the Board.

Done and effective this 2nd day of June, 2017.

State Board of Pharmacy

BY: Wendy Anderson
Wendy Anderson
Program Director

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